IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

Crl.MC.No. 6589 of 2000

CC.479/2000 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

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PETITIONER/2ND ACCUSED:

D.RAVEENDRAN
PERIYAVEEDU
THAMARAKKULAM
KOLLAM

BY ADV. SRI.V.G.ARUN

RESPONDENTS/ COMPLAINANT & 1ST ACCUSED:

1. SUNDARA KUMAR
S/O LATE BALAKRISHNAN
MALAVILA VEEDU
MUKKOODU, KUNDARA
KOLLAM DISTRICT

2. M/S SUN REFINERIES (P) LIMITED
REPRESENTED BY ITS MANAGING DIRECTOR
T.P.IX/476, KADAVOOR
KOLLAM

BY ADV. SRI.P.SIVARAJ
PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 01/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

A.K.BASHEER, J.

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Crl.MC.No. 6589 of 2000

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ORDER

Dated, 1st Dec. 2007

A.K.BASHEER, J.

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Crl.M.C.No.6589 OF 2000

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Dated this the 1st day of December 2007

ORDER

Petitioner, who has been arraigned as accused no.2 in a prosecution under Section 138 of the N.I. Act in his capacity as Managing Director of the company on whose behalf the cheque was issued, has preferred this petition under Section 482 of the Code of Criminal Procedure to quash the above proceedings pending against him.

2. Though the petitioner has contended that he had ceased to be the Managing Director shortly after issuance of the cheque and therefore he was not liable to be prosecuted, I find no merit in the above contention. But in my view, the petitioner is entitled to succeed on yet another ground.

3. It is the admitted position that the cheque dated June 20, 1996 was presented for encashment on October 29, 1996. It was dishonoured for want of sufficient funds in the account of the company. Thereafter, statutory notice dated November 15, 1996 was issued which was returned as “unclaimed” by the

petitioner. It is admitted by the complainant himself that he had presented the cheque once again on December 17, 1996 which was dishonoured yet again on December 30, 1996. Thereafter, the complainant had issued a second statutory notice on January 29, 1997. At that time, it was returned with the endorsement 'addressee left'. It was thereafter that Annexure-I complaint was filed against the company and the petitioner. The learned Magistrate took the complaint on file as C.C.479/00 which is now pending on the file of the Judicial Magistrate of First Class-I, Kollam.

4. In **Prem Chand V. Yashpal Singh [2005 (2)KLT 914 (SC)]**, it has been held by their lordships of the Supreme Court that if dishonour of a cheque has once snowballed into a cause of action it is not permissible for a payee to create another cause of action with the same cheque. It has been further held that a combined reading of Sections 138 and 142 of the Act leaves no room for doubt that cause of action within the meaning of Section 142(c) arises--and can arise--only once.

5. In view of the above legal position, the proceedings pending against the petitioner are liable to be quashed. I do so.

Crl.M.C. is allowed. The proceedings pending against the petitioner in C.C. 479/2000 on the file of the Judicial Magistrate of First Class I, Kollam are quashed.

(A.K.BASHEER, JUDGE)

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